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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/582,940	06/15/2006	Toru Moriguchi	292106US0PCT	9811
22850 7590 11/15/2007 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER MI, QIUWEN	
			ART UNIT 1655	PAPER NUMBER
			NOTIFICATION DATE 11/15/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/582,940

Applicant(s)

MORIGUCHI ET AL.

Examiner

Qiuwen Mi

Art Unit

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 12-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/15/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION**Election/Restrictions**

Applicant's election with traverse of Group I, claims 1-11, and species phosphatidyl serine (claim 2), linseed (claim 3), *Ginkgo biloba* (claim 6), and docosahexaenoic acid, in the reply filed on 10/17/07 is acknowledged. The traversal is on the ground that each invention groups should be taken as whole for consideration, and searching for all the claims would not constitute a serious burden on the office. This is not found persuasive because the inventions listed as Groups 1-III do not relate to a single general inventive concept they lack the same or corresponding special technical features for the following reasons: Noble et al (C*, US 5,484,611) teach a fatty acid composition and the proportion by weight of the major fatty acids in total phospholipid was palmitic 35.9, palmitoleic acid<1, stearic acid 16.2, oleic acid 16.4, linoleic acid 2.2, linolenic acid<1, arachidonic acid 9.6, and docosahexaenoic acid 17.7, therefore, there is no special technical feature in the application. Accordingly the groups are not so linked as to form a single general concept under PCT Rule 13.1., and therefore lack of unity of invention exists. The inventions of Group I-III are three distinct inventions for the reason mentioned above. They have different electronic resources and search queries, and searing for one subject matter will not necessarily lead to another. Applicant is reminded of the extensive literature search in biotechnology which is not co-extensive.

Claims 12-15 are withdrawn from further consideration as being drawn to nonelected inventions.

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Claims Pending

Claims 1-15 are pending. Claims 12-15 are withdrawn as they are directed toward a non-elected invention groups or species. Claims 1-11 are examined on the merits.

Abstract Objections

The abstract of the disclosure is objected to because it contains more than one paragraph. Correction is required. See MPEP § 608.01(b).

Claim Rejections –35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 9, 10, and 11 are rejected under 35 USC § 102 (b) as being anticipated by Noble et al (C*, US 5,484,611).

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Noble et al teach a fatty acid composition and the proportion by weight of the major fatty acids in total phospholipid was palmitic 35.9, palmitoleic acid<1, stearic acid 16.2, oleic acid 16.4, linoleic acid 2.2, linolenic acid<1, arachidonic acid 9.6, and docosahexaenoic acid 17.7.

The intended use of the composition was analyzed for patentable weight. It is deemed that the preamble 'breathes life' into the claims in that it is deemed that the prior art product must not be precluded for use as a cosmetic (topical) composition. It is deemed that the composition disclosed by Noble et al. is not precluded for carrying out the intended function of the claims.

Therefore, the reference is deemed to anticipate the instant claim above.

Claim Rejections –35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCleary (A*, US 2002/0182196) in view of Bydlon et al (B*, US 2003/0050341).

McCleary teaches a composition for normalizing impaired or deteriorating neurological function comprising phosphatidyl serine, docosahexanoic acid (DHA), and Gingko biloba (see Title, Abstract, [0177]).

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McCleary does not teach the incorporation of fish oil, and linseed into the composition.

Bydlon et al teach compositions containing the fatty acid docosahexaenoic in combination with vitamin and mineral as supplement nutrition for health issues particularly associated with cardiovascular and central nervous systems [0021]. Bydlon et al teach that DHA has been found to be important for immunological system, cardiovascular system, and central nervous system [0008], and DHA may be obtained from natural sources include oils and fats from cold-water fish etc, and exemplary sources of DHA includes seed oil such as flaxseed oil etc [0024], and the supplement nutrition overcomes the drawbacks associated with dietary supplements of the prior art [0018].

It would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use the fish oil and flaxseed oil as DHA sources in Bydlon et al in the invention of McCleary since Bydlon et al teach that the supplement nutrition containing DHA are particular useful for health issues associated with central nervous system, and the supplement nutrition overcomes the drawbacks associated with dietary supplements of the prior art. Since both of the compositions yielded beneficial results in central nervous system, one of ordinary skill in the art would have been motivated to make the modifications.

It is noted that the label of the composition will not materially change the composition being claimed.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

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Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Qiuwen Mi


MICHELE FLOOD
PRIMARY EXAMINER